## *APPENDIX D*

January 19, 1965

Mr. Dan A. Spencer
Room 1041
Maison Blanche Building
New Orleans, La.

Dear Mr. Spencer:

Your Appeal in Case No. C-80504, City of New Orleans versus Dan Arthur Spencer, is now ready to be filed in the Criminal District Court.

In accordance with Ordinance 828 MCS, Section 40-41, the charge of $1.00 per page for each page of the transcript amounts to $37.00 for 37 pages. You have previously posted the $10.00 deposit as set out in Section 40-40 of said Ordinance and, under Section 40-41 of the said Ordinance, the amount above stated now due must be paid within five judicial days from the date of this letter. A failure so to do shall operate as a dismissal of the appeal as provided by law.

Yours very truly,

ARTHUR J. BOE
Clerk, Municipal Courts

AJB:dbf

January 19, 1965

Mr. Edward A. Haggerty, Clerk
Criminal District Court
Tulane and Broad Streets
New Orleans, La.

Dear Sir:

Enclosed herewith please find Appeal in the case of the City of New Orleans versus Dan Arthur Spencer, Affidavit No. C-80504:

| | |
|---|---|
| Transcript | — Page 1 through 37 |
| Affidavits (2) | — Page 38 through 39 |
| Propositions of Law | — Page 40 through 42 |
| Motion for Appeal | — Page 43 |
| Appeal Bail Bond | — Page 44 |
| Certified Copy of Ordinance 828 MCS, Section 49-7 | — Page 45 |
| Certified Copy of Ordinance 828 MCS, Section 42-90 | — Page 46 |

Yours very truly,

ARTHUR J. BOE
Clerk, Municipal Courts

AJB:dbf

CITY OF NEW ORLEANS

VS.

DAN ARTHUR SPENCER
829 URSULINE ST.
NEW ORLEANS, LA.

---

AFFIDAVIT NO. C-80504

CHARGE: VIOLATION OF ORDINANCE NO. 828 M.C.S., SECTION 49-7, RELATIVE TO REVILING THE POLICE; VIOLATION OF ORDINANCE NO. 828 M.C.S., SECTION 42-90, RELATIVE TO REFUSING TO MOVE ON.

---

TRANSCRIPT OF TESTIMONY AND NOTES OF EVIDENCE IN THE ABOVE NUMBERED AND ENTITLED CAUSE; SAME BEING TAKEN IN OPEN COURT BEFORE THE HONORABLE JOSEPH R. BOSSETTA, JUDGE, MUNICIPAL COURT, SECTION C, ON DECEMBER 4, 1964, IN BEHALF OF THE CITY AND THE ACCUSED.

---

CITY WITNESSES:
PTN. F. WILSON, N.O.P.D.
LT. F. MARTELLO, N.O.P.D.

DEFENSE WITNESSES:
MR. STEVE WAINWRIGHT

DEFENSE ATTORNEY:
MR. DAN ARTHUR SPENCER

PROSECUTING ATTORNEY
MR. J. B. KIEFER

---

Reported by:
Mrs. Dorothy B. Ford
Stenographer

PLEA OF NOT GUILTY ENTERED

COURT:

Let the record show that on December 2, 1964, there was filed on behalf of the defense motion for subpoena ducis tecum in which it was requested by the defense, through his counsel, that all of the investigative reports of the Police Bureau of Investigation, including statements by any persons related thereto, of the arrest of the defendant in the captioned matter on the 13th of October, 1964, by members of the New Orleans Police Department should be made available to the defendant. Is there any objection from the city prosecutor?

ATTY. KIEFER:

The City objects to the motion for the subpoena ducis tecum.

ATTY. MURRAY:

My name is Murray, and I am representing Mr. Spencer, but he is also an attorney and has done a good deal of preparation himself so he will handle this procedure.

DEFENDANT:

This motion is based solely on the case of Brady versus Maryland, 1963, which states that it is a denial of due process under the Fourteenth Amendment of the United States Constitution for the State not to make available to the defendant any evidence it has relative to the case which may prove favorable to the defendant. It is obvious that the defendant cannot find out whatever evidence might be favorable to him unless he knows what the evidence is going to be. I would like to provide the Court with the citation to that case. It is Brady versus the State of Maryland, 83 Supreme Court, 1194. It is my belief that there is in possession of the Police Department statements by the officers.

COURT:

Do you have a memorandum that was ordered by the Court?

DEFENDANT:

If the Court is going to grant the motion I can see no alternative but to continue this case.

COURT:

But the Court did order a memorandum, to which you agreed?

DEFENDANT:

I would be prepared to waive this motion and my rights in that regard.

COURT:

You wish to withdraw your motion now, or do you want a ruling?

DEFENDANT:

I would like a ruling on it.

COURT:

The Court would like for its orders to be obeyed. I would like to have the memorandum and the court request — the memorandum to make sure that every possible avenue was explored to protect your rights.

DEFENDANT:

This identical motion was denied yesterday in another section of this Court.

COURT:

I am only responsible for the verdicts I render, and I offered you an opportunity to file everything possible on your behalf.

DEFENDANT:

I will at this time withdraw that motion and I will elicit the desired testimony.

COURT:

Let the motion previously filed be withdrawn at the request of counsel.

DEFENDANT:

I can't tell from the affidavit who filed the affidavit.

COURT:

Let the record show that the accused is Dan Arthur Spencer, of 829 Ursuline Street. Is that correct?

DEFENDANT:

That's correct.

COURT:

That on Tuesday, the 13th of October, 1964, at about 1:50 A. M., at the First District Police Station within the jurisdiction of this Court and the confines of the City of New Orleans, the accused did then and there wilfully violate Ordinance No. 828 MCS, Section 49-7, relative to reviling the police.

DEFENDANT:

Section 49-7 does not have such a title as reviling the police.

COURT:

All motions should be in writing.

DEFENDANT:

I would simply like to know what I am charged with.

COURT:

According to the affidavit you are charged with reviling the police.

DEFENDANT:

There is no ordinance reviling the police in the Code of the City of New Orleans. Number 49-7 states cursing, etc.

COURT:

Are you referring to the black print that heads the ordinance?

COURT:

Are you referring to the black print that heads the ordinance?

DEFENDANT:

Yes, the black print which heads the ordinance.

COURT:

We all know that the black print is only indicative and the responsibility lies only in the body of the ordinance.

DEFENDANT:

I think there is a provision in the Louisiana Constitution that requires the title to be indicative of anything contained in the body, and I don't think the word "cursing" necessarily includes reviling.

COURT:

You are concerned with the fact that you as the defendant are entitled to know the nature and extent of which you are being charged, is that correct?

DEFENDANT:

Yes.

COURT:

You are being charged with Section 49-7 concerning or relative to the reviling of the police or that portion of it.

DEFENDANT:

I would not be charged with cursing the police, but reviling the police?

COURT:

Yes.

DEFENDANT:

I will stand on what you have stated and file no formal pleadings.

DEFENDANT:

As to the other offense, under 42-90, refusing to move on, I don't see the relevancy of refusing to move on under the title of that statute. I don't believe the title of the statute is indicative of making it unlawful to refuse to move on.

COURT:

If you desire to file special pleadings I will allow you to withdraw your former plea of not guilty and allow you a reasonable amount of time to file special pleadings if you so desire, but they must be in writing.

DEFENDANT:

I am not requesting a continuance in this case to file special pleadings. The only purpose of my argument at the moment is to determine whether or not this affidavit is going to be limited to the exact offense which is charged in the affidavit.

COURT:

All affidavits are limited to the exact offense charged.

DEFENDANT:

Would that limitation also limit the proof to that portion of the ordinance? In the charge of reviling the police is the charge going to be limited to reviling the police or be allowed to go into other matters in that ordinance, and as to refusing to move on are they going to be allowed to prove other things than the refusing to move on?

COURT:

The Court certainly is not going to admit any

evidence that the Criminal Code of Procedure says is not admissable.

DEFENDANT:

We are ready for trial at this time.

ATTY. KIEFER:

Let the record reflect that there is an attorney of record assisting and representing counsel.

PTN. F. WILSON, DULY SWORN, TESTIFIED:

ATTY. KIEFER TO PTN. WILSON:

Q. Please state your name.

A. Patrolman Frank Wilson, New Orleans Police Department.

Q. You were so employed on the 13th of October, 1964?

A. I was.

Q. Do you recall an incident involving Dan Spencer, the defendant in this case, which occurred on that night?

A. Yes, I do.

Q. Where did that incident occur?

A. In the First District Police Station.

Q. In what capacity were you in the First District Police Station!

A. On that morning I was working in the capacity of acting Desk Sergeant.

Q. At what time was this?

A. This was about 1:45 A. M.

Q. This was in the City of New Orleans?

A. Yes.

Q. Please relate to the Court what occurred at that time while you were on duty.

A. While working as Desk Sergeant that morning I noticed the defendant before the bar standing near the booking cage. I asked if I could

help him and he inquired about a subject previously arrested, Wainwright. He asked what were the charges against Wainwright. I went to the arrest book and read off the charges against Mr. Wainwright and related this information to Mr. Spencer. At this time Mr. Spencer said, "What"? and I again read the three charges off to him. At that time Mr. Spencer stated that he shared an apartment with Mr. Wainwright and he felt Mr. Wainwright would do nothing to warrant his being arrested for those three charges, which were vagrancy by loitering reviling the police and resisting arrest. I then informed Mr. Spencer that I was not the arresting officer, and with this he cut me off and said, "Well, who did arrest Wainwright"? Lieutenant Martello, who had been standing just in back of me and who was in hearing distance of the conversation between me and Mr. Spencer, joined in the conversation and said, "I was one of the officers instrumental in arresting Wainwright", and at that time Mr. Spencer again made the statement that Mr. Wainwright was of good character and would do nothing to warrant any such arrest. Lieutenant Martello then informed Mr. Spencer that he was not going to discuss the case, and that if Mr. Spencer was interested in the case he should come to court that night at the trial. Mr. Spencer then said, "Look, buddy", and with that Lieutenant Martello broke off and said, "I'm not your buddy, and if you want to find out anything else about the case you can come to court that night". Mr. Spencer then turned to me and asked if he could see Mr. Wainwright. I informed him that Mr. Wainwright was not at the station at that time, that he had been brought to the Bureau of Identification to be photographed and fingerprinted. With this Mr. Spencer in a loud tone said, "Fingerprinted and photo-

graphed? What for"? And I informed him that the fingerprinting and photographing was a part of the booking procedure. He then asked how long would Mr. Wainwright be at the Bureau of Identification, and I stated to him that it would probably take anywhere from twenty minutes to an hour, and he asked the reason for this long time for a man to be processed, and I explained to him that the people that were brought up to the Bureau of Identification to be processed were processed as fast as they could. Mr. Spencer then asked again who were the arresting officers, and again he was notified that it was the Lieutenant and two Patrolmen. He took a piece of paper out of his pocket and jotted down these three names. Again he asked when would Wainwright be brought back to the District Station, and I informed him it would probably take an hour. He then asked me, "Will that smart Lieutenant be here when I come back"? and I told him probably the Lieutenant would be at the station, and I asked him would he leave. He then said, "No, I know how you cops operate. I know you're going to keep Wainwright here for about a week", and I told him that if Mr. Wainwright was paroled or had posted bond upon his return he would be released. He then asked me how could he go about getting Mr. Wainwright out. I then informed him it would be either through a seventy-five dollar cash bond, twenty-five dollars for each charge, or through an elected official. Then Mr. Spencer kept bringing up the fact that Mr. Wainwright was of good character and he was unjustly arrested. Several times I had asked him to leave the station. It seemed that by his being there and the Lieutenant being there they were more or less trying to argue between each other. I had to ask Mr. Spencer two or three times to leave. When

he refused to leave I informed him if he didn't leave he would also be arrested. He then said, "What kind of charge are you going to dream up for me"? I then took him by the arm, placed him in the booking cage and charged him accordingly.

Q. What did you charge him with?

A. I charged him with reviling the police and refusing to move on.

Q. Do you know what Mr. Spencer's occupation is?

DEFENDANT:

Objection. That is immaterial and irrelevant to any matter before this Court.

COURT:

Objection sustained.

ATTY. KIEFER:

Q. Did Mr. Spencer ever represent himself to you to be an attorney?

DEFENDANT:

Objection. That is immaterial and irrelevant. I don't see the relevancy of whether or not I represented myself as an attorney to this man on the night in question. The fact that I was an attorney may be material, but the fact whether or not I represented myself to him as one is immaterial.

COURT:

Objection overruled. The Court feels that the representations made by the defendant certainly has a bearing and is very material.

DEFENDANT:

May I ask the Court to tell me which of the two charges this testimony is material to before I made my objections?

COURT:

Which of the two charges that this is material to?

DEFENDANT:

Yes.

COURT:

Which did you object to?

DEFENDANT:

As to both of them.

COURT:

You didn't state that you did.

DEFENDANT:

I think it is immaterial to either one of them.

COURT:

You didn't state so.

DEFENDANT:

I will state so now that I think it is immaterial to either of the charges to any matter before this court.

COURT:

Formally make your objections.

DEFENDANT:

I object to the question as to whether or not I represented myself as an attorney at law on the night in question on the grounds that it is immaterial and irrelevant to the two charges pending against me before this court at this moment.

COURT:

Objection overruled in both instances.

DEFENDANT:

To the ruling of the Court I wish to note my reservations forming a bill of exceptions to the ruling of the Court on my objections, on the

grounds that the testimony sought to be elicited is immaterial and irrelevant to any matter before this Court.

ATTY. KIEFER:

Q. Please answer the question.

A. No.

Q. Did you know him to be an attorney?

DEFENDANT:

I object on the grounds that it is immaterial, irrelevant and leading. It is immaterial and irrelevant to either of the charges.

COURT:

Sustained:

ATTY. KIEFER:

Q. How was Mr. Spencer attired or dressed that night?

DEFENDANT:

Objection, on the grounds that it is immaterial and irrelevant to either of the charges.

COURT:

Sustained.

ATTY. KIEFER:

Would you please tell the court the demeanor of the defendant?

DEFENDANT:

Objection. The testimony sought to be elicited is immaterial and irrelevant. It seeks an opinion of the witness in a matter in which he has not been qualified as an expert.

COURT:

The Court has to take cognizance of the fact that the word "demeanor" means actions of the party. Is that what you meant?

ATTY. KIEFER:

His actions and his behaviour.

DEFENDANT:

I think he can ask what my actions were. He asked for demeanor. I think that what he is seeking is testimony as to a frame of mind.

COURT:

Objection overruled.

DEFENDANT:

To the ruling of the Court I should like to reserve a formal bill of exceptions on the grounds that the testimony sought to be elicited is immaterial, irrelevant and incompetent.

ATTY. KIEFER:

Q. You will please answer the question.

A. It was very disrespectful.

Q. In what respect?

A. He acted as though he was taking the charges against Mr. Wainwright as more or less a personal fight between him and the police.

DEFENDANT:

Objection to that testimony on the grounds that it is immaterial and irrelevant to any charge against me at this time.

COURT:

What are you objecting to?

DEFENDANT:

He is testifying as to what he thinks my attitude towards the police was, and I fail to see the relevancy of that.

COURT:

He is testifying as to what he personally saw. It is up to me to believe or disbelieve him. Objection sustained.

ATTY. KIEFER:

Q. Did he speak to you in a courteous manner?

DEFENDANT:

Objection.

COURT:

Overruled.

DEFENDANT:

To the ruling of the Court I wish to reserve a formal bill of exceptions on the grounds that the testimony sought to be elicited is irrelevant and immaterial.

ATTY. KIEFER:

Q. Please answer the question.

A. As Mr. Spencer was holding conversation with me he was also arguing and asking me different questions and I would answer the questions. He would at times raise his voice and become real loud and real offensive towards me, and then other times he would be real calm. Then he would direct a question or a statement to Lieutenant Martello in a loud voice or real belligerent, and when he asked me "Is that smart Lieutenant going to be here when I return"?, "I know how you cops operate", and "What kind of charge are you going to dream up for me?", each time he would ask these questions and make these statements it would be in a loud tone, a real mean tone, a disrespectful tone.

Q. When you asked him to move on what did he answer?

A. He would just avoid the whole statement. Several times I said, "Mister, you're going to get in trouble. Why don't you leave?", and he would laugh and shake his head like he was not going to do it. He wouldn't make any statement whatsoever, like "No, I'm not", but at one time I said, "You're going to get in

trouble", he said, "I know what kind of charge you're going to dream up for me. I know the way you cops operate".

ATTY. KIEFER:

Q. Then what did you do at that point?

A. I then went around the booking cage, took him by the arm and walked him to the booking cage.

Q. And then what did you do?

A. I then booked him.

Q. What is the procedure that you follow for booking?

A. The procedure is to put the item number on the arrest book and the charges against the subject and the location of the arrest, and then the arresting officers. After that is completed the information about the subject is filed in the book — name, address, age, etc.

Q. What was his behaviour during this time?

A. He just stood before the booking cage smiling.

Q. Did he ask you any questions?

A. No.

Q. Was he cooperative?

A. Yes, I would say he was cooperative.

Q. At that point he was?

A. Yes.

ATTY. KIEFER:

I have no other questions of this witness.

DEFENDANT:

I have no questions for this witness at this time. I would like to reserve my right to recall him later if it appears necessary.

LIEUTENANT MARTELLO, DULY SWORN, TESTIFIED:

ATTY. KIEFER TO LT. MARTELLO:

Q. State your name.

A. Frank L. Martello.

Q. You are a member of the New Orleans Police Department?

A. Yes.

Q. You were so employed on October 13, 1964?

A. Yes.

Q. At approximately one o'clock in the morning?

A. Yes.

Q. In what capacity were you serving at that time?

A. Lieutenant of Police. Platoon commander assigned to the First District on the last watch, eleven to seven.

Q. Do you recall an incident involving the defendant which occurred at that time and in that place?

A. Yes, I do.

Q. That place is in the City of New Orleans?

A. That's correct.

Q. Please tell the Court what that incident was.

A. We were in the District Station and this arrested person here before the Court came into the station, and he inquired about the arrest of one Stephen Wainwright. He spoke to Officer Frank Wilson. He wanted to know what he was charged with. The officer explained to him that he was charged with vagrancy, reviling the police and resisting an officer. He inquired as to how the man could be released from custody. It was explained to him by Officer Frank Wilson that he could post seventy-five dollars cash bond, or have an elected official or judge have him paroled. At this time he stated he wanted the names of the arresting officers. He said that he lived with this boy at 829 Ursuline Street and it was a friend of his. I gave him the name of the officers,

Officers Boepple and Oddison. He said he knew this boy. He said, "I live with him and I know he wouldn't do anything like this". He again asked if a civil judge or circuit judge could get him paroled, and we informed him that he could. I think it was Judge Julian Samuels he said. He asked the names of the officers again and I told him I had given them to him, and he said he wanted them again. I gave them to him again, and he wrote them down. He says, "I know how you smart cops operate". I told him, "Just a minute. I don't think you understand the circumstances surrounding this arrest", and with that he became enraged. He became emotional. He pointed his finger at me in this manner, and he says, "Look, buddy, let me tell you", and that's about as far as he got because I stopped him. I said, "Look, just a minute. I'm not your buddy. You're in a police station. I'm a Lieutenant of Police, and you will address me accordingly", and I said, "Get out of here". I did this because I didn't want to arrest the man. I figured it would be better to let him leave the station. Then he made no effort to leave the station. He said, "How long are you going to keep him back there"? We explained to him that there is a procedure in the department that we take a prisoner and have him mugged and fingerprinted, brought to the Bureau of Identification and as soon as this procedure is completed he is returned to the station. He again stated "I guess you guys will keep him in jail a week". We were very busy at the district with a lot of duties to perform. He says, "Will that smart Lieutenant be there when I come back"? Officer Wilson walked over to him and says, "You'd better leave. The Lieutenant told you to leave. Why don't you leave"? He again made no effort to leave the station, and he says, "Yeah, you guys, you'll dream up some

charges for me". After being told two or three times to leave the station and he showed no indication of leaving, we arrested him and charged him with refusing to move on and reviling the police. At this time a call came over of a burglary, and I left the station and went on the call.

Q. How long were you gone from the station?

A. I was out approximately an hour and a half, or so. When I came back to the station I inquired if Mr. Wainwright had returned from the Bureau of Identification and they said he hadn't, and I made a personal call to the B. of I. technician and he informed me he just came back from a photograph job on this same burglary and he had to take fingerprints.

DEFENDANT:

Objection. I fail to see the relevancy. The testimony about who he spoke to and what the other officer told him, I think that's hearsay.

COURT:

Sustained.

ATTY. KIEFER:

Q. Did you know the occupation of Mr. Spencer at that time?

A. No.

Q. In what way was he dressed?

DEFENDANT:

Objection, on the grounds that the question seeks to elicit information which is immaterial and irrelevant.

COURT:

Sustained.

ATTY. KIEFER:

Q. Did Mr. Spencer ever represent himself to you to be an attorney?

DEFENDANT:

Objection, on the grounds that it is immaterial and irrelevant.

COURT:

Objection overruled.

ATTY. KIEFER:

Q. Please answer the question.

A. No, he did not.

Q. In which way was he attired? In which way was he dressed?

DEFENDANT:

You just sustained an objection to the question as to how I was dressed. I renew my objection as to how I was dressed.

COURT:

Sustained.

ATTY. KIEFER:

Q. How long have you been a member of the New Orleans Police Department?

DEFENDANT:

Objection. The testimony sought to be elicited is immaterial and irrelevant to the charges before the Court.

COURT:

Why is it immaterial and irrelevant?

DEFENDANT:

I can't see any relevancy because the length of time that the witness has been a member of the New Orleans Police Force does not tend to prove the defendant in this case is guilty of either of the charges made against him.

COURT:

Objection overruled.

DEFENDANT:

To the ruling of the Court I will reserve a bill of exceptions on the grounds that the testimony sought to be elicited is immaterial and irrelevant in the matter before this Court.

ATTY. KIEFER:

Q. Please answer the question.

A. A little over sixteen years.

Q. Do you like being called "a smart cop"?

DEFENDANT:

Objection. That question seeks to elicit testimony which is irrelevant and immaterial. How the witness feels about being called a smart cop does not tend to prove the defendant is guilty.

COURT:

Sustained.

ATTY. KIEFER:

Q. Do you feel that the word "cop" is insulting?

DEFENDANT:

Objection. The question seeks to elicit testimony which is immaterial and irrelevant.

COURT:

Sustained.

ATTY. KIEFER:

Q. Do you feel that the word "cop" is insulting to you?

DEFENDANT:

Objection, on the grounds that it is immaterial and irrelevant, and seeks an opinion of the witness as to a matter on which he is not qualified as an expert.

COURT:

Sustained.

ATTY. KIEFER:

Q. What is the manner in which you were addressed by the defendant on that night?

A. It was very sarcastically. It was very downgrading and abusive towards a police officer who was attempting to be reasonable.

Q. In which respect?

A. In the manner in which he made these remarks, the tone of voice, the belligerent manner he directed his finger at me — not in a menacing manner, but in a directing manner and loud tone of voice.

ATTY. KIEFER:

I have no other questions of this witness.

DEFENDANT TO LT. MARTELLO:

Q. Do you know if it is unlawful to criticize a police officer?

ATTY. KIEFER:

Objection. That is a ruling for the Court to make.

COURT:

Sustained.

DEFENDANT:

Q. Is the fact that you were criticized on this night the basis of your charge of reviling the police?

CITY ATTY.

Objection. I don't see where it is material to the charges against this defendant.

DEFENDANT:

I think the materiality and relevancy of the question are obvious.

ATTY. KIEFER:

The Police Department represents the entire community, and they are in this case as the City versus the defendant, not in any individ-

ual capacity, and the police officer acted in an agency capacity of this community, and he asked for a personal reflection from this particular witness.

DEFENDANT:

That is three fourths of this man's testimony is as to the fact that he feels like he was criticized that night.

COURT:

I will allow the question.

DEFENDANT:

Q. Is the criticism which you claim was directed at you the basis of the charge against me of reviling the police?

A. I feel that the criticism or the remarks passed in this particular case was a reflection on the entire police department, for the men under my command who I demand respect from and who I demand that they perform in a proper and professional manner, and was a reflection upon the community in its entirety.

DEFENDANT:

I have no further questions. I would like to reserve the right to call him back later.

ATTY. KIEFER:

That is the City's case, except for rebuttal.

DEFENDANT:

Will the Court take judicial notice of the fact that the defendant in this case is an attorney at law and that he represents Steve Wainwright in another section of this Court as an attorney?

ATTY. KIEFER:

I object, because I fail to see any connection between the two cases at this particular time. I have previously made a motion to consolidate and the position was taken by counsel for the

defendant that the cases had nothing to do with each other.

COURT:

I don't understand the nature of your request.

DEFENDANT:

I am seeking to establish the fact that I did have legitimate business in the police station on that night by the fact that I represented somebody that had been arrested.

COURT:

You have to establish that by fact.

DEFENDANT:

I was asking the court to take judicial notice of it.

COURT TO ATTY. KIEFER:

Would you stipulate that he represented him on that that night?

ATTY. KIEFER:

I refuse to stipulate that he represented him on that particular night, and I don't think you did on that particular night, unless when you take the stand you testify that he called you on that particular night and engaged you as an attorney. I won't stipulate to that.

DEFENDANT:

I would like to call Stephen Wainwright to the stand.

DEFENSE WITNESS, STEPHEN WAINWRIGHT, DULY SWORN, TESTIFIED:

DEFENDANT TO MR. WAINWRIGHT:

Q. What is your name?

A. Stephen Wainwright.

Q. Do you know me?

A. I do.

Q. Do you know my name?
A. Dan Arthur Spencer.
Q. What is my occupation?
A. An attorney at law.
Q. Do you know what my occupation was on the night of October 13th.
A. I do.
Q. What was it?
A. You were an attorney at law.
Q. Were you arrested and charged at the First District Police Station on the night of October 13, 1964?
A. I was.
Q. Did you on that night call me and ask me to come and get you out of jail?
A. I did.
Q. Did I agree to do so?
A. You did.

COURT:

For what purpose are you asking this gentleman whether or not you are an attorney at law?

DEFENDANT:

It was my contention that what the police thought or did not think is immaterial, but what I was is material.

COURT:

Is this man testifying as to whether or not you are an attorney or whether he feels that you are? Is he testifying for the Supreme Court or the Bar Association? To the best of his personal knowledge you are an attorney?

DEFENDANT:

I am trying to establish the fact that I had legitimate business in the police station on that

night by the fact that I represent him and he had been arrested, booked, brought in and incarcerated.

ATTY. KIEFER:

I object, unless they put the witness outside. He is putting word after word into the witness's mouth.

ATTY. MURRAY:

It has been stipulated by the counsel for both sides that since August 26, 1964, Dan Spencer has been an attorney at law qualified to practice in the State of Louisiana.

ATTY. KIEFER:

That's correct.

DEFENDANT:

We have no further questions, and we rest our case.

ATTY. KIEFER TO MR. WAINWRIGHT:

Q. How are you employed?

A. I am a student.

DEFENDANT:

Objection. I fail to see the materiality of this testimony.

COURT:

You put this witness on the stand.

DEFENDANT:

Yes, but I didn't ask any questions relative to his employment.

COURT:

Counsel has a right to cross-examine this witness.

DEFENDANT:

Yes, but only as to matters material to the charges before the court, and I fail to see how

his occupation has any relevancy whatsoever to the charges against me of reviling the police and refusing to move on.

COURT:

Overruled, and I will allow the witness to answer the question.

DEFENDANT:

To which ruling of the Court I reserved formal bill of exception on the grounds that the testimony sought to be elicited by the question objected to is irrelevant and immaterial to any matter before this Court and goes beyond any matter brought out by the defense in this case.

COURT:

The Court will reverse its ruling and sustain your objection.

ATTY. KIEFER:

Q. Have you ever engaged Mr. Spencer to be your attorney in the past, prior to these incidents?

A. No.

Q. This was the first time you had ever engaged Mr. Spencer as your attorney?

A. Yes.

Q. Were you present in the District Station when Mr. Spencer was there?

DEFENDANT:

Objection. It is irrelevant and immaterial, and goes beyond any matters brought out by the defense in this case. This is not proper rebuttal. He is not rebutting anything brought out in the defendant's case.

ATTY. KIEFER:

It is certainly material to the case. He has put this man on the stand. I wanted to find out if he knows anything else.

COURT:

Objection sustained.

ATTY. KIEFER:

Q. Have you ever had any other charges against you?

DEFENDANT:

Objection.

COURT:

Sustained.

ATTY. KIEFER:

I have no other questions of this witness.

DEFENDANT:

We rest our case.

ATTY. KIEFER:

That is the City's case.

ARGUMENT

ATTY. KIEFER:

I am sure you are well aware that this is a case which deals with the integrity of an attorney as well as the integrity of the enforcement agency of the City; however, two charges have been placed against the Defendant, reviling the police and refusing to move on. You have heard the testimony of the two officers, a Patrolman and a Lieutenant. There were numerous subpoenas issued for the purpose of attempting to impeach or distort the credibility of these witnesses. However, none of these subpoenas was executed and there has been nothing whatsoever in this record to in any way, shape, manner or form blemish the words which they spoke here before you. Insofar as the charge of refusing to move on, they had no reason whatsoever from their testimony to realize or to even believe or to even speculate that the defendant had any reason or lawful busi-

his occupation has any relevancy whatsoever to the charges against me of reviling the police and refusing to move on.

COURT:

Overruled, and I will allow the witness to answer the question.

DEFENDANT:

To which ruling of the Court I reserved formal bill of exception on the grounds that the testimony sought to be elicited by the question objected to is irrelevant and immaterial to any matter before this Court and goes beyond any matter brought out by the defense in this case.

COURT:

The Court will reverse its ruling and sustain your objection.

ATTY. KIEFER:

Q. Have you ever engaged Mr. Spencer to be your attorney in the past, prior to these incidents?

A. No.

Q. This was the first time you had ever engaged Mr. Spencer as your attorney?

A. Yes.

Q. Were you present in the District Station when Mr. Spencer was there?

DEFENDANT:

Objection. It is irrelevant and immaterial, and goes beyond any matters brought out by the defense in this case. This is not proper rebuttal. He is not rebutting anything brought out in the defendant's case.

ATTY. KIEFER:

It is certainly material to the case. He has put this man on the stand. I wanted to find out if he knows anything else.

COURT:

Objection sustained.

ATTY. KIEFER:

Q. Have you ever had any other charges against you?

DEFENDANT:

Objection.

COURT:

Sustained.

ATTY. KIEFER:

I have no other questions of this witness.

DEFENDANT:

We rest our case.

ATTY. KIEFER:

That is the City's case.

ARGUMENT

ATTY. KIEFER:

I am sure you are well aware that this is a case which deals with the integrity of an attorney as well as the integrity of the enforcement agency of the City; however, two charges have been placed against the Defendant, reviling the police and refusing to move on. You have heard the testimony of the two officers, a Patrolman and a Lieutenant. There were numerous subpoenas issued for the purpose of attempting to impeach or distort the credibility of these witnesses. However, none of these subpoenas was executed and there has been nothing whatsoever in this record to in any way, shape, manner or form blemish the words which they spoke here before you. Insofar as the charge of refusing to move on, they had no reason whatsoever from their testimony to realize or to even believe or to even speculate that the defendant had any reason or lawful busi-

ness in the First District Police Station. At no time did he represent himself to the officers as an attorney. He was not familiar to them as an attorney. They did not know him to be an attorney, and certainly by the nature of the charges his conduct was not at that particular time that of an attorney. When asked to move on he did not move on. When asked again to move on he refused to move on. When requested by another officer, in order to even avoid this charge, to "just leave", he still did not move on, and at that time he was booked for refusal to move on. As to the next charge of reviling the police, there can be no doubt whatsoever but that the Lieutenant and the Patrolman were both insulted, reacted in that manner and felt a serious offense at the manner in which they were addressed, and the words which were spoken to them, including the demonstration of pointing a finger at a Lieutenant and saying, "Look, buddy". This is certainly not a proper way to address an officer of that rank, much less any other member of the Police Department, especially when he knew he was an attorney and they did not know he was an attorney. The words which he used such as "that smart Lieutenant", or "Those smart cops", are approbrious words, insulting words, and they took issue with it and booked him accordingly with the charge of reviling the police. The City has carried the burden all the way. It has not been attacked. It has not in any way been minimized. I think that there is pure, convincing, overwhelming proof to substantiate the two charges made herein, that of reviling the police and refusing to move on.

DEFENDANT:

I would like to start by reading the Ordinance Section 49-7, entitled "Cursing, Etc., Police Prohibited", which states, "It shall be unlaw-

ful and a breach of the peace for any person wantonly to curse or revile or to use obscene of opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty". I wish to point out some of the elements of this offense, one, that the cursing or reviling must be done wantonly. Wantonly is defined as unchaste or lewd or lascivious. I have not heard any testimony to indicate the defendant committed or said anything in a wanton manner. There is no testimony as to the remarks attributed to the defendant having been made in an arrogant recklessness with complete disregard of justice. This is another definition of the term "wanton". There was no testimony as to whether the police officer was actually engaged in the performance of his duty at the time in question. One of the elements of the offense is that the officer must be engaged in performing his duty at the time the words were spoken. None of the words which the witnesses for the City have testified that the Defendant spoke can be categorized as cursing or reviling or obscene or opprobrious under any definition of any dictionary that I have been able to find. For instance, opprobrious means expressive of opprobrium, attaching disgrace, reproachful, scurrilous, infamous. These are only a few of the terms. If this ordinance relative to reviling the police as it is termed in the affidavit does not prevent something less than obscene language or lascivious language, I must contend that the ordinance is unconstitutional, is violating the freedom of speech guaranteed by the Fourteenth Amendment.

ATTY. KIEFER:

There has been absolutely no attack leveled against the ordinance under which he was charged relative to the constitutionality or unconstitutionality thereof, and therefore it is

not a proper subject to argue. You should argue facts and not law. It is up to your Honor to decide, and if he takes issue with the law it was by preliminary motion that he should have put you aware of his intent.

DEFENDANT:

The fact that the constitutionality has not been put at issue does not mean that I cannot do so now. I have a number of propositions of law which I will submit to the Court at the conclusion of my argument for the Court to rule on if the Court feels it is necessary.

As to the constitutionality of the application of this ordinance is that criticism which is made in language which is something less than obscene or lascivious would be a violation of the freedom of speech guaranteed by the Fourteenth Amendment to the United States Constitution, as this freedom was expressed in the State of Louisiana versus Garrison, cited by the United States Supreme Court. I am contending that it would be unconstitutional to interpret this ordinance as prohibiting any criticism of a police officer which is not obscene. There is no cursing involved, and I do cite the recent case of the United States Supreme Court.

COURT:

I don't understand what you are saying. This ordinance of which you speak, as you read it said "wantonly to curse and/or revile or to use obscene or opprobrious language towards or with reference to. Which one are you telling me is a violation of freedom of speech? The cursing, reviling, obscene language, or all?

DEFENDANT:

I think all of them could be interpreted in such a manner that they are unconstitutional. If you interpret the term opprobrious language

towards a policeman as including a statement by me that the police officers in this city behave like police officers in a Fascist police state, this is opprobrious and tends to bring disgrace upon the Police Department, but my freedom to do that is protected by the Constitution, and this ordinance cannot constitutionally be applied to prevent that type of language. These officers suggested on the stand that I criticized the manner in which they went about arresting people. They suggested that I accused them of arresting people without reasonable grounds. I did do that. Let's assume the truth of that. My statement to that effect, that they did do this without reasonable grounds, that they made it a practice to do so is constitutionally protected under the terms of the decision in the case of Garrison versus Louisiana. I have a freedom to criticize any public official. I can even say untrue things about him as long as I do not know they are untrue at the time. I can even do it maliciously as long as my statement is not a reckless falsehood. The ordinance cannot be interpreted in such a manner as to prohibit that kind of language when directed towards a police officer, and at the same time I contend that even the broadest interpretation of this ordinance would not include any of the things that I am accused of having said. The other offense is Section 42-90, entitled "Same—Idle Persons; Loiterers, Prostitutes, etc." I can only find one section in this that might apply to this case, and that is Section 6, which states that "Person who shall, without legitimate business thereat, remain, loiter or idle his time on the sidewalks or public streets or places within the limits of the city after having been notified to move therefrom by any officer or member of the police force". It has been established that the defendant in this case is an attorney

at law and was present in the police station on that night attempting to see his client, and to obtain his release from jail. I think that fully establishes a legitimate purpose in having been there. The fact that the officer did not know that he was an attorney has absolutely nothing to do with this, and is immaterial to this case, and this is why I directed my objection to that point in the trial. I have prepared several Propositions of Law. I would like to submit these propositions to the Court and close my arguments.

COURT:

This is a document in writing by way of support to your argument?

DEFENDANT:

No. This is identical to what we call Instructions to Jurors in a case that requires a jury. When you don't have a jury the revised statutes provide that propositions regarding a case may be put to the Judge, and he is to rule on these just as he would on instructions which would be put to a jury if this were a jury trial.

COURT:

You are now instructing me as to what the law is?

DEFENDANT:

I am arguing that is what the law is.

COURT:

You are proposing, or instructing?

DEFENDANT:

I am suggesting to the Court that that is the law, and I am asking the Court to rule on these matters.

COURT:

Would you give me the State Statute by which this is authorized?

DEFENDANT:

Yes.

ATTY. KIEFER:

If it is your pleasure to have a written answer in the record, then I will prepare a written answer to these propositions. I have not checked this procedurally, but whenever you do prepare instructions to juries, and counsel has stated that this is tantamount to an instruction to the jury, you do prepare them in advance and get rulings on them in advance and not at the last minute after the closing argument put them to the Judge, because by that time it is time for the jury to go out and make a decision. As I said, I can't pinpoint the manner in which this should have been filed procedurally or the manner in which I should have been apprised of it being filed. To that procedure I object.

COURT:

The Court will allow the propositions to be filed, but you have a right to oppose them.

ATTY. KIEFER:

In order to protect the interests of the City I have no other alternative but to answer these in a formal written manner, only in view of your ruling to my objection of them being presented to you. My objection is to the submission of this to you at this particular time, never having received a copy of this in advance of the trial and at the conclusion of counsel's closing argument, and which objection is simply leveled at the question as to whether or not you will use these propositions in order to reach your decision in this matter on either of these two charges, and in the event that you overrule the objection then I would like time to answer this in writing.

COURT:

Normally, the time to file these things is before

argument; however, the Court desires to give the defendant all latitude possible and will allow them to be filed.

ATTY. KIEFER:

To which propositions I now request that you will grant me a reasonable period of time in which to formally answer.

COURT:

How much time would you want?

ATTY. KIEFER:

One week.

DEFENDANT:

I object to his motion for additional time. The proper time is certainly before the case is submitted to the Court, and I think a week's delay or any delay is uncalled for in a case of this sort. If this were a jury trial the prosecution and the defense certainly have to submit their propositions of law at the conclusion of their argument at the very latest.

COURT:

The Court denies the request.

ATTY. KIEFER:

I would like to make some concluding remarks. In response to the argument of the Defendant, I submit to you that the term "wanton" should be taken in its complete sense, and that is the intent with which it was drafted into the ordinance. That was the intent with which it was enacted, and for this reason we take it in its common and acceptable sense, and in its common and acceptable sense it is associated with disregard and disrespect. Counsel questioned whether or not these officers were serving in a legal capacity. The third question asked each and every officer was, "In what capacity were you serving the New Orleans Police De-

partment on this particular day and at this particular hour", and each in turn responded with particularity telling you not only that he was serving as an officer of the law but where he was and what he was doing, so that has been clearly established. Insofar as the questions aimed at the opprobrious words as to whether they were or not, naturally this is the essence of why we are before you. The essence of the argument is simply that each and every event must come before a Judge to determine in an objective analysis of the testimony adduced at the trial as to whether the words used were insulting. Each and every incident constituted an insult to the integrity of the entire Police Department of the City of New Orleans. This is an attack leveled at their integrity, and that is the manner in which they reacted and expressed this reaction to you. Certainly it has to be beyond the use of so called four letter words of cursing. It has got to be beyond that, and these words were insulting to them and they expressed that to you, and, finally, as far as whether or not counsel had to identify himself or tell these officers that he was an attorney, this is very, very elementary to the charge as to whether or not he had any legitimate business there, or whether they had reason to believe that he had any legitimate business there. Just as an officer in plain clothes must identify himself before he proceeds, the attorney certainly must identify himself to law enforcement officers before he tries to take control of the entire First District Police Station. The facts are overwhelming. You have heard them. They have not been attacked. There has been no attack on the testimony presented by the City.

COURT:

The Court has carefully considered this matter and all exigencies thereunto connected and all

else, and renders the following verdict: The Court finds you guilty as charged on both charges. Are you ready for sentencing?

DEFENDANT:

I would like to enter an objection to the Court rendering a verdict before ruling on the Propositions of Law.

COURT:

I have taken all of that into consideration.

DEFENDANT:

I should like to have the clerk note my reservation of a formal bill of exceptions to the rendering of a verdict in this case before ruling on the Propositions of Law which I have propounded to the Court, on the grounds that this is a violation of the Louisiana Revised Statutes, Title 15, Section 339, and to the applicable statutes.

COURT:

I have ruled on them. I said I have taken that into consideration. The Court has carefully considered this matter and all exigencies connected and all else, and renders the following verdict. Are you ready for sentence?

DEFENDANT:

I am.

COURT:

The Court hereby sentences you to pay a fine of fifteen dollars ($15.00) or serve five days in jail on each charge. The Court feels that there should be a suspension of the execution of the sentence, and the Court hereby suspends the execution of the sentence.

DEFENDANT:

I should like to make a motion for an appeal.

COURT:

Motion for appeal is granted.

CERTIFICATION BY THE COURT:

I hereby certify the foregoing to be a true and correct copy of the notes of evidence in the above cause.

JOSEPH R. BOSSETTA
JUDGE

Stenographer